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IN THE
Supreme Court of the United States

METRO-GOLDWYN-MAYER STUDIOS INC. *et al.*,
Petitioners,

v.

GROKSTER, LTD. *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICI CURIAE* OF UTAH, NORTH CAROLINA, VIRGINIA, RHODE ISLAND, TEXAS, MISSISSIPPI, ALABAMA, ALASKA, ARIZONA, ARKANSAS, COLORADO, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, ILLINOIS, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MASSACHUSETTS, MICHIGAN, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, NEW MEXICO, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, VERMONT, WEST VIRGINIA, WISCONSIN AND THE TERRITORY OF GUAM IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether companies that provide Internet-based file-sharing services designed to enable users to exchange copyrighted material for free and without permission from the copyright owners are liable for the copyright infringement committed by their users and upon which the companies' business depends.

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SCHOLARLY AUTHORITIES

Jesse M. Feder, *Is Betamax Obsolete?: Sony Corp. of America v. Universal City Studios, Inc. In The Age of Napster*, 37 Creighton L. Rev. 859 (2004) 5
Aaron L. Melville, Note, *The Future of the Audio Home Recording Act of 1992: Has it Survived the Millennium Bug?*, 7 B.U. J. Sci. & Tech. L. 372 (2001) 4
Albert Sieber, *The Constitutionality of the DMCA Explored: Universal City Studios, Inc. v. Corley & United States v. Elcom Ltd.*, 18 Berkeley Tech. L.J. 7 (2003) 4
Tim Wu, *When Code Isn't Law*, 89 Va. L. Rev. 679 (2003) 5, 12, 13

OTHER AUTHORITIES

CR Investigates: Protect Yourself Online, Consumer Reports, Sept. 2004 11
amazon.com (last visited Nov. 8, 2004), *at* http://www.amazon.com 6
Business Software Alliance, *Piracy and the Law*, *available at* http://www.bsa.org/usa/antipiracy/Piracy-and-the-Law.cfm (last visited Nov. 8, 2004) 12
CinemaNow (last visited Nov. 8, 2004), *at* http://www.cinemanow.com 6
Cydoor: Desktop Media (last visited Nov. 8, 2004), *at* http://www.cydoor.com 11
Simon Dyson, Informa Media Group Report, *Music on the Internet* (4th ed. 2003) 3
FTC, *FTC Cracks Down on Spyware Operation* (Oct. 12, 2004), *available at* http://www.ftc.gov/opa/2004/10/spyware.htm 11

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Lev Grossman, *It's All Free*, Time, May 5, 2003 ...	12
iPod+iTunes (last visited Nov. 8, 2004), *at* http://www.apple.com/itunes	6
Patrick L. Kenney, *The Napster Battle: Applying Copyright Laws in the Era of the Internet and Digital Music*, e-Commerce L. & Strategy, June 2000	4
msn music (last visited Nov. 8, 2004), *at* http://www.music.msn.com	6
Nat'l Conference of State Legislatures, *2004 State Legislature Relating to Internet Spyware or Adware*, *at* http://www.ncsl.org/programs/lis/spyware04.htm (last updated Oct. 19, 2004)	11
Deputy Assistant Attorney General John G. Malcolm, *Privacy and Intellectual Property—Legal Issues Related to Peer-to-Peer File Sharing Over the Internet*, Address to the N.Y. State Bar Ass'n & Int'l Bar Ass'n (Oct. 23, 2003), *available at* http://www.cybercrime.gov/Malcolmtestimony102303.html	10
State Net, *Issue Trends Spyware*, *at* http://www.statenet.com/fpdata/issue_trends.htm (last visited Nov. 8, 2004)	11
Chris Taylor, *Invasion of the Movie Snatchers; More and More Movie Fans are Sharing Films Online, and Hollywood Doesn't Like It. Should the Studios Find a Way to Adapt?*, Time, Oct. 11, 2004, at A2.....	12
Press Release, U.S. Immigration & Customs Enforcement, *Departments of Justice, Homeland Security Announce Child Pornography File Sharing Crackdown* (May 14, 2004), *at* http://www.ice.gov/graphics/news/newsreleases/articles/porncrackdown.htm.....	1

INTERESTS OF *AMICI CURIAE*

The *Amici* States' and Territories' Attorneys General are responsible for enforcing the consumer protection laws and other public interest statutes within their respective jurisdictions. Protecting the public and enforcing the law are affirmative obligations. The *Amici* seek to identify and prevent threats from materializing, to cultivate and encourage a culture of lawfulness, to educate citizens about the legal standards governing their conduct, and to maintain and promote the development of a lawful business culture as our residents and their institutions seek to make the most of rapidly advancing technological innovation. The issues raised in this case impact all of these interests.

Even more importantly, peer-to-peer ("P2P") networks are increasingly becoming havens for non-copyright-related criminal activity. Of particular concern to the *Amici* is the widespread use of P2P technology to disseminate pornography, particularly unlawful child pornography, and the deliberate choice of some P2P networks to disable control devices that might be effective in tracking and prosecuting this predatory practice. As part of an ongoing effort to keep pace with emerging technologies that are being used to commit, facilitate, and conceal Internet crimes against children, federal, state, and local law enforcement officials have joined forces as part of a nationwide initiative to combat the large volume of child pornography being distributed through P2P networks. See Press Release, U.S. Immigration & Customs Enforcement, *Departments of Justice, Homeland Security Announce Child Pornography File Sharing Crackdown* (May 14, 2004), *at* http://www.ice.gov/graphics/news/newsreleases/articles/porncrackdown.htm. This effort is undermined and its success will be obstructed by a legal standard that permits companies, who facilitate not only the conduct but also the anonymity of perpetrators, to escape any responsibility for their role in these crimes.

The widespread use of P2P technology for illegal purposes presents a number of unique threats to the citizens of the States and Territories. Respondents' P2P services are overwhelmingly used to locate and duplicate copyrighted works (such as songs, movies, print and audio books, audio newspapers and periodicals, and computer software) for free and without the permission of the copyright owners. The massive scope of this infringement victimizes artists, writers, production companies, distributors, theaters, and stores that lawfully do business in *Amici*'s States and Territories and, inevitably, the consumers who do business with them. This infringement also creates a threat to the users of file-sharing services (many of whom are minors) who do not yet fully appreciate the unlawful nature of their conduct, the legal risks they are undertaking, and the personal risks they are running and to which they are exposing their families. Further, the *Amici* are concerned that their citizens may be subjecting themselves to unwanted invasions of privacy and may be unwittingly falling victims to identity theft due to their use of P2P services. Many P2P services (including Respondent Grokster) include hidden "spyware" with their software that is designed secretly to monitor and report on the user's computer activities. Moreover, *Amici* have found that P2P services are rife with criminal schemes, such as instructions on how to pilfer financial accounting data from computer users and otherwise engage in electronic identity theft. The Ninth Circuit's decision allows these problematic practices to continue on Respondents' services and on any other P2P network which does business from within that circuit with risk of liability to users.

The "mind-boggling"[1] level of copyright infringement facilitated by Respondent's services also causes direct injury

[1] *Pornography, Technology, and Process: Problems and Solutions on Peer-to-Peer Networks: Hearing Before the Senate Comm. on the Judiciary*, 108th Cong. (Sept. 9, 2003) (statement of Marybeth Peters, The

to the States and Territories themselves. Any time legitimate commerce such as that associated with the distribution and sale of copyrighted works is submerged into the black market, the community inevitably suffers a direct loss of the jobs, business investment, and sales tax revenue that would otherwise be generated by the affected industry. In this case, the Respondents' software (and similar P2P services that also follow an infringement-driven business model) have caused billions of dollars in lost sales. See, *e.g.*, Simon Dyson, Informa Media Group Report, *Music on the Internet* 25 (4th ed. 2003). Theft and redistribution on such a grand scale imposes broad economic harm with far reaching consequences.

As the foregoing discussion suggests, the threats to the citizens of *Amici*'s States and Territories posed by the Ninth Circuit's decision directly implicate the *Amicis*' interests in enforcing the law, protecting consumers, promoting a law-abiding culture, educating citizens about legal standards, and promoting lawful innovation. The decision creates a conflict among the federal circuits regarding the legal standards governing P2P technology and effectively establishes a safe harbor for those who would utilize P2P technology for illegal purposes. *Amici* need a clear and uniform legal standard that protects the welfare of their citizens.

BACKGROUND

The Ninth Circuit's decision is the latest attempt to grapple with the widespread copyright infringement occurring on P2P networks. See *In re Aimster Copyright Litig.*, 334 F.3d 643 (7th Cir. 2003), *cert. denied*, 124 S. Ct. 1069 (2004); *A&M Records, Inc.* v. *Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001). These networks (whether they are utilized for lawful or unlawful purposes) build on two technical innovations of the

Register of Copyrights), *available at* http://www.copyright.gov/docs/regstat090903.html (Pet. App. 65a-66a).

digital age: the ability easily and repeatedly to duplicate digital files without data degradation, and the interconnection and rapid transmission capability offered by the Internet.

I. THE DIGITAL COPYING PHENOMENON.

One significant advantage of digital technology is its ability to make perfect-quality copies of existing data files.[2] For some time, various technologies have offered the capability of storing and copying data (including songs, pictures, movies, computer software and typewritten documents) in electronic format. However, these previous technologies suffer from the drawback of data degradation. In particular, when a data file stored using older technologies is copied, some data are inevitably lost and the copy is therefore of lesser quality than the original. As this duplication process is repeated, copies made from already-degraded copies become undesirable or unusable. In contrast, digital files can be repeatedly copied (and copies made from the copies) with little or no loss in quality. See Aaron L. Melville, Note, *The Future of the Audio Home Recording Act of 1992: Has it Survived the Millennium Bug?*, 7 B.U. J. Sci. & Tech. L. 372, 376-79 (2001). Thus, a computer program, song or movie stored in digital format can be copied literally millions of times, and each of those copies can be re-copied through multiple generations with each copy enjoying the same perfect quality as the original. Moreover, this copying process can be accomplished relatively quickly and inexpensively using hardware that is commonly incorporated into personal computers ("PCs"). See *id.* at 382.

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[2] *See Recording Indus. Ass'n* v. *Diamond Multimedia Sys., Inc.*, 180 F.3d 1072, 1073 (9th Cir. 1999); Albert Sieber, *The Constitutionality of the DMCA Explored: Universal City Studios, Inc. v. Corley & United States v. Elcom Ltd.*, 18 Berkeley Tech. L.J. 7, 14 (2003); Patrick L. Kenney, *The Napster Battle: Applying Copyright Laws in the Era of the Internet and Digital Music*, e-Commerce L. & Strategy, Jun. 2000, at 6.

Of course, to make a copy of a digital file the user needs access to a high-quality original version. This can be accomplished by obtaining a physical data storage device such as a compact disk ("CD") or Digital Video Disk ("DVD") that contains a copy of the relevant data file. However, the process of locating and copying a particular file can also be accomplished by transmitting the digital data from one computer to another through the Internet. See Tim Wu, *When Code Isn't Law*, 89 Va. L. Rev. 679, 716-18 (2003).

II. P2P SOFTWARE UTILIZES THE INTERCONNECTION AND RAPID TRANSMISSION PROVIDED BY THE INTERNET TO CREATE LARGE LIBRARIES OF FILES AVAILABLE FOR COPYING.

Typically, a person obtains information from the Internet by using a computer to retrieve data from a Web page hosted by another computer connected to the Internet. In this scenario, the person seeking information is the "client" and the computer that hosts the Web page is the "server." The client makes a request for access to digital files such as news pages, weather reports, or audio files, and the server fulfills the request by sending the relevant information to the client's computer. See *Metro-Goldwyn-Mayer Studios, Inc.* v. *Grokster Ltd.*, 380 F.3d 1154, 1158 (9th Cir. 2004) ("*Grokster II*"); see also Jesse M. Feder, *Is Betamax Obsolete?: Sony Corp. of America v. Universal City Studios, Inc. In The Age of Napster*, 37 Creighton L. Rev. 859, 863 (2004). For example, a consumer who is seeking to purchase a copy of a copyrighted book, photograph, or song from a legitimate online retailer will use a computer to search for the desired file, will exchange payment data with the retailer's Web page, and will receive a "downloaded" copy of the digital audio file from the retailer's server.[3]

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[3] There are a number of legitimate Internet vendors that offer various types of copyrighted works for sale via download to the client's PC. *See,*

P2P exchanges operate somewhat differently. In contrast to the typical client-and-server system discussed above, the information contained in a P2P network does not reside on a centralized server on the Internet but rather exists on networked PCs that simultaneously may be acting both as clients and servers. Users download the P2P software program onto their PC. On a P2P network, the person or company who has created P2P software offers the software for download from a Web site or other sources. Both Grokster and StreamCast offer the software for their networks free of charge.[4] The software allows these users (the "peers" in a peer-to-peer system) to access the computers of everyone else who has installed that particular P2P software. The purpose of networking the peers' computers in this manner is to allow the peers to search each others' computers and copy the data files stored therein. The P2P software both provides the necessary search capability and it permits the transfer of files between users. In other words, a P2P user may both request and provide copies of digital files from other users on the network.

To facilitate the file-searching function of these wide-ranging networks, all P2P software has an indexing component, which represents the list of files available on the

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e.g., http://www.music.msn.com (music); http://www.apple.com/itunes (music, audiobooks, foreign language lessons and recorded public radio programs); http://www.amazon.com (print and audio books, audio periodicals such as *Forbes* and *Scientific American* , audio newspapers such as *The New York Times*, music, recorded radio programs, and computer software); http://www.cinemanow.com (movies).

[4] Their business model is based on advertising revenues which increase in proportion to the amount of user traffic on their networks. Users are attracted to Grokster and Streamcast by the possibility of free downloads of copyrighted material. To implement this business model, Grokster and Streamcast usually bundle intrusive adware or spyware with the free versions of P2P software they give out to users. This adware or spyware is automatically installed without the user's effective consent or knowledge.

network for copying at any given time. The creators of the P2P software may choose to have this index centralized or decentralized, although that choice has little practical impact on the function or use of the network. The first and perhaps most notorious P2P network, Napster, utilized a centralized indexing system whereby the files available for copying (*e.g.* copyrighted digital music files) remained on the users' PCs, but a centralized server maintained an index of the available files. When users entered search requests, Napster's server compared the requests with the file names listed in the centralized index and transmitted the search results to the requesting user along with the locations of the matching files in the form of Internet Protocol ("IP") addresses.[5] The requesting user then communicated directly with the "host" user to arrange for the transfer of files from one PC to another over the Internet.[6]

Next-generation P2P companies such as Grokster and StreamCast developed a modified structure for their P2P services specifically to avoid secondary liability for the copyright infringement imposed on Napster. They have decentralized the indexing feature of their software. Instead of a centralized index, every person using StreamCast's software maintains a list of digital files that he or she is willing to share. The software enables each search request to be broadcast to every computer on the StreamCast network and routes the results to the requestor.[7] Thus Grokster and

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[5] An IP address is a string of numbers that uniquely identifies each computer connected to the Internet.

[6] The Ninth Circuit relied, in part, on this central indexing feature when it held Napster vicariously liable for the infringement of its users. *A&M Records, Inc.* v. *Napster, Inc.*, 239 F.3d 1004, 1027 (9th Cir. 2001).

[7] Grokster's software is designed somewhat differently. Rather than every computer maintaining its own index of files available for copying, certain PCs on the network associated with Grokster's software are designated as indexing servers and requests for files are routed through these indices.

StreamCast have designed their software to shift the indexing function to the infringing users themselves. The Ninth Circuit has concluded that this technological slight of hand warranted a different legal standard applicable to vicarious copyright infringement. See *Metro-Goldwyn-Mayer Studios, Inc.* v. *Grokster, Ltd.*, 259 F. Supp. 2d 1029, 1045-46 (C.D. Cal. 2003) ("*Grokster I*"), *aff'd*, 380 F.3d 1154 (9th Cir. 2004).

III. THE NINTH CIRCUIT'S DECISION.

In 2001, a number of motion picture and recording industry entities (the "copyright plaintiffs") sued Grokster and StreamCast in federal district court in California for copyright infringement based on the contributory and vicarious infringement theories of secondary liability. The district court granted summary judgment in respondents' favor. *Grokster I*, 259 F. Supp. 2d at 1045-46. The court of appeals affirmed, concluding that respondents did not have the requisite level of knowledge to be held contributorily liable because the software at issue was *capable of* substantial noninfringing uses. *Grokster II*, 380 F.3d at 1161-63. The court further found that respondents did not materially contribute to the infringement of their software users because Grokster and StreamCast neither provided storage for infringing data files nor maintained indices of copyrighted materials available for dissemination. *Id.* at 1163-64. The court of appeals rejected the copyright plaintiffs' claim of vicarious infringement because it concluded that neither software provider possessed the right and ability to supervise and control the behavior of its users. *Id.* at 1165. In so doing, the Ninth Circuit expressly rejected the copyright plaintiffs' claim that respondents should be held liable because they refused to adopt simple modifications that would permit them to monitor the behavior of their users. The court of appeals dismissed the argument that Grokster and StreamCast should not be able to escape vicarious liability by simply turning a "'blind eye'" to the copyright infringement of their users while simultaneously encouraging and relying on that activity

in order to be profitable. *Id.* at 1166. As the Ninth Circuit explicitly recognized, its opinion is in conflict with the analysis of these issues articulated by the Seventh Circuit in *In re Aimster Copyright Litig.*, 334 F.3d 643 (7th Cir. 2003). See *Grokster II*, 380 F.3d at 1162 n. 9.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari in this case to remedy the conflict between the Ninth and the Seventh Circuits and to resolve the confusion regarding the legal standards that govern secondary copyright liability in the context of P2P networks. The public, copyright holders, and law enforcement officers such as the *Amici* have an urgent need for uniform rules to be applied to this activity. In particular, the *Amici* need such clarity to fulfill their law enforcement duties and to protect consumers. Accordingly, irrespective of what principles the Court ultimately applies in the P2P context, the announcement of those principles should not be delayed.

I. THE NINTH CIRCUIT'S DECISION POSES A THREAT TO CONSUMERS.

Ordinarily, the societal effects of any particular copyright infringement case are not so severe as to merit significant consideration in the decision whether to grant certiorari. But this is not the typical case. The illegal activity occurring on respondents' networks poses a number of real and immediate threats to consumers and the economic welfare of the states and territories.

First, the people who use respondents' P2P services and their families are increasingly (and perhaps unwittingly) at risk. For example, when P2P users install file-sharing software on their PCs, they can expose themselves and their children to massive amounts of unwanted pornographic material, including child pornography available on these

services.[8] P2P users are often ill-equipped to respond to this onslaught, given that 41 percent of those who download files on P2P networks are between the ages of twelve and eighteen.[9] Sexual predators often seek to surprise or lure young viewers by giving files containing offensive material names that are innocuous or even attractive to young users (such as "Britney Spears" or "Pokemon"). Some predators choose to distribute pornographic images on P2P networks because law enforcement officials have infiltrated many Internet chat rooms where child exploitation occurs, and the encryption features associated with P2P software can shield the identity of the originator of offending files. By affording predators the cover of anonymity, encryption features incorporated into P2P software impede law enforcement efforts to identify and prosecute those who victimize children.

Respondents' efforts to disable their ability to police user conduct increases the threat posed by child exploitation on P2P networks. Simply put, other P2P services will mimic respondents' successful behavior—ensuring that they (and *Amici*) know as little as possible about any unlawful behavior on their networks so that they cannot be held secondarily liable for that behavior. The Ninth Circuit's decision therefore puts our children at increased risk and thus presents a question of urgent national significance in need of further review by this Court.

Second, the fact that the Ninth Circuit's decision allows respondents and others to continue an infringement-based

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[8] Deputy Assistant Attorney General John G. Malcolm, *Privacy and Intellectual Property—Legal Issues Related to Peer-to-Peer File Sharing Over the Internet*, Address to the N.Y. State Bar Ass'n & Int'l Bar Ass'n (Oct. 23, 2003), *available at* http://www.cybercrime.gov/Malcolmtestimony102303.htm.

[9] *The Dark Side of a Bright Idea: Will Personal and National Security Risks of P2P Networks Compromise the Promise of P2P Networks?, Hearing Before the Senate Comm. on the Judiciary*, 108th Cong. (Jun. 17, 2003) (statement of Senator Orrin Hatch).

business model both places consumers' privacy at risk and frustrates the policy judgments of a number of States. Unlike legitimate retailers, respondents do not make their money from sales of copyrighted products to end users. Rather, respondents' businesses are driven by the volume of traffic on their networks. See *Grokster I*, 259 F.Supp. 2d at 1044. To make money, respondents sell advertising to third parties. The more users that are attracted by the prospect of free downloads of copyrighted works, the more respondents can charge their advertising clients.

To make this business model work, free versions of P2P software are almost always bundled with intrusive spyware, which is automatically installed on the users' computers without their effective knowledge or consent. Spyware, a form of adware, monitors a user's Web browsing activities and causes targeted advertising to appear on a user's computer screen.[10] Some sophisticated spyware is even capable of logging keystrokes to record personal information, such as online account passwords, which can lead to identity theft. Spyware consumes hard drive space, slows users' Internet connections and is responsible for a large percentage computer crashes. *CR Investigates: Protect Yourself Online*, Consumer Reports, Sep. 2004, at 12. A number of States have made efforts to curb the dissemination of spyware. See Nat'l Conference of State Legislatures, *2004 State Legislature Relating to Internet Spyware or Adware*, *at* http://www.ncsl.org/programs/lis/spyware04.htm (last updated Oct. 19, 2004) (detailing State efforts); State Net, *Issue Trends: Spyware*, *at* http://www.statenet.com/fpdata/issue_trends.htm (last visited Nov. 8, 2004) (same); see also FTC, *FTC Cracks Down on Spyware Operation* (Oct. 12, 2004), *available at* http://www.

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[10] The spyware Cydoor is bundled with Grokster's free software. Cydoor displays pop-up advertisements and communicates information to advertisers about users' Web activity. *See CR Investigates: Protect Yourself Online*, Consumer Reports, Sep. 2004, at 12; http://www.cydoor.com.

ftc.gov/opa/2004/10/spyware.htm (discussing federal efforts to combat spyware). The Ninth Circuit's decision stands as a potential roadblock to the effective implementation of the States' and Territories' policy decisions, since respondents' services operate from the Ninth Circuit but are available to the citizens of every State on the Internet.

Third, the scope of the unlawful conduct facilitated by respondents' activities is staggering. *Each and every day* more than 85 million copyrighted songs are illegally downloaded from P2P networks. See Lev Grossman, *It's All Free*, Time, May 5, 2003 (more than 2.6 billion songs illegally copied each month). That is the rough equivalent of *two hundred million* CDs being stolen every month. *See* Wu, *supra*, at 710. This is crime of unprecedented proportions, and music is just one type of copyrighted work that is illegally distributed on respondents' networks.

The widespread copyright infringement on which respondents' business is based has real-world costs for American consumers and the community. In this case, the scope of the lost commerce cannot be overstated. As a result of that injury to lawful trade, the *Amici*'s States and Territories are losing jobs, sales tax revenue, and legitimate business investment on a significant scale. See Business Software Alliance, *Piracy and the Law*, *available at* http://www.bsa.org/usa/antipiracy/Piracy-and-the-Law.cfm (last visited Nov. 8, 2004) (noting lost jobs, wages and tax revenue due to pirated software); Chris Taylor, *Invasion of the Movie Snatchers; More and More Movie Fans are Sharing Films Online, and Hollywood Doesn't Like It. Should the Studios Find a Way to Adapt?*, Time, Oct. 11, 2004, at A2 (noting that illegal downloads threaten the livelihoods of a wide variety of artists).

These losses are not limited to brick-and-mortar businesses. The illegal duplication of copyrighted works on P2P networks threatens the ongoing development of legitimate innovations in online retailing. As noted above, a number of businesses

have launched Internet Web sites that sell authorized downloads of songs, movies, books, computer software and other copyrighted works. See *supra* at note 3. The threat of secondary copyright liability persuaded Napster to convert to a business based on authorized sales. See *supra* at 9. But the viability and success of these innovative online businesses is diminished by the fact that all of the copyrighted materials they sell can be easily and quickly obtained on respondents' P2P networks for free. By establishing standards that immunize respondents from secondary liability, the Ninth Circuit's decision imperils the trend to lawful online commerce in copyrighted works.

Moreover, the harms associated with the Ninth Circuit's decision extend beyond just the economic aspects of infringement. As courts and commentators have noted, many P2P users are genuinely confused about the legal standards that govern the duplication of copyrighted works on P2P networks. See Wu, *supra*, at 722-26 (discussing several studies which have shown that "those who use filesharing networks do not think they are stealing"). While such copying is clearly unlawful, many of the users of these systems (nearly half of whom are minors) are unaware or uncertain of this fact. See *id.* And P2P services exploit this ambiguity to the fullest extent. See *id.* at 724 ("The design of P2P networks ... tak[es] full advantage of an existing ambiguity as to whether home, non-commercial copying is 'wrong.'"). As a result, the operators of P2P systems are able to entice users with the prospect of free songs and movies, and (as noted below) expose those users to both legal and safety risks. The Ninth Circuit's decision exacerbates this problem by immunizing respondents from liability for operating and profiting from an infringement-driven business, yet leaves the individual consumer fully exposed to the legal and practical consequences (which the consumer may not fully appreciate) of illegal P2P use.

The Ninth Circuit's decision provides an incentive for technological innovation to develop in a manner that foments lawlessness and puts the public at risk. At a minimum, the Ninth Circuit's decision must be read as stating that the fact that respondents affirmatively chose to eliminate or disable tools for detecting and discouraging illegal activity is irrelevant to the secondary-liability analysis. See Pet. App. 13a, 43a n.7. At worst, the Ninth Circuit's decision provides a perverse incentive for P2P businesses to take steps to minimize their ability to control unlawful conduct on their networks, so that the P2P provider can claim ignorance of its users' intringement while profiting from the infringing traffic. See *id.*

II. THE NINTH CIRCUIT'S DECISION CREATES A CONFLICT IN THE CIRCUITS.

This Court has historically granted *certiorari* in copyright cases presenting issues of urgent importance regardless of whether the state and lower federal courts had diverged on the issues in question. See, *e.g.*, Brief of Petition for a Writ of Certiorari at 10, *New York Times Co.* v. *Tasini*, 533 U.S. 483 (2001) (No. 00-201) (asserting review in copyright cases is granted "even absent a direct circuit conflict") (citing *Campbell* v. *Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994); *Feist Publ'ns, Inc.* v. *Rural Tel. Serv. Co.*, 499 U.S. 340 (1991); *Harper & Row Publishers, Inc.* v. *Nation Enters.*, 471 U.S. 539 (1985); *Mills Music, Inc.* v. *Snyder*, 469 U.S. 153 (1985); *Sony Corp. of Am.* v. *Universal City Studios, Inc.*, 464 U.S. 417 (1984)). For the aforementioned reasons, this case would meet that standard. However, this Court's immediate review is even more critical because, as Petitioners have well documented (Pet. at 24-29), the Ninth Circuit's decision conflicts with the law of the Seventh Circuit in several critical respects.[11]

[11] As the Seventh Circuit's well-reasoned opinion in *Aimster* demonstrates, the Ninth Circuit's decision also conflicts with this Court's holding in *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U.S. 417 (1984). *See Aimster*, 334 F.3d at 647-51 Petitioners have effectively described the Ninth Circuit's misapplication of *Sony*, *see* Pet. at 15-24, and *Amici* will therefore not repeat those points here.

In *Aimster*, the Seventh Circuit upheld a preliminary injunction effectively shutting down Aimster's P2P file-sharing service. Aimster's software was designed to prevent the company from knowing what specific files were being copied and shared among its users. See 334 F.3d at 646-47. The Seventh Circuit concluded that "the ability of a service provider to prevent its customers from infringing is a factor to be considered in determining whether the provider is a contributory infringer." *Id.* at 648. The *Aimster* court also concluded that "[w]illful blindness" satisfied the knowledge requirement for contributory infringement. *Id.* at 650. The court stated that a file-sharing service does not shield itself from liability for contributory infringement by using encryption technology to prevent itself from obtaining actual knowledge that its service is being used for unlawful purposes. *Id.* at 650-51. Further, in analyzing the noninfringing use defense, the court held that the burden is on the product or service provider to establish that its product or service not only is *capable of* noninfringing uses, but is *actually used* for noninfringing purposes. *Id.* at 653. Moreover, the court held that even if there are noninfringing uses for a file-sharing network, if the infringing uses are substantial, then to escape liability the service provider must demonstrate that the burden of eliminating or reducing the infringing uses would have been disproportionately costly. *Id.*

These points are in direct conflict with the Ninth Circuit's decision in this case. First, where the Ninth Circuit requires only that a product or service be *capable of* noninfringing uses, the Seventh Circuit obliges P2P providers to demonstrate that its product or service is *actually used* for noninfringing purposes. Second, unlike the Ninth Circuit, the

Seventh Circuit held that P2P providers could not design their software so as to avoid knowledge that their product is being used to facilitate copyright infringement; rather, the court concluded that, regardless of whether a product or service is used for noninfringing purposes, the ability of a provider to limit or prevent the infringement of its users is relevant to the liability analysis.

These are fundamental differences between the circuits on an issue of vital importance. It simply is impossible to believe that the same court that shut down Aimster would have condoned the actions of Grokster and StreamCast. Because the copyright laws inherently require uniform rules and because this Court long has recognized that liability should not be affected by the fortuity of geography, certiorari should be granted to review the Ninth Circuit's holding.

III. FURTHER PERCOLATION IS UNLIKELY TO BE OF ASSISTANCE TO THIS COURT.

Awaiting further development of these issues in the lower federal courts is not likely to be of material assistance to this Court. The Ninth Circuit's decision creates a zone of safety for those who would build infringement-based P2P businesses. Respondents and others can now base their P2P operations within the Ninth Circuit, distribute P2P software that enables Internet-based copyright infringement, and then sell advertising based upon the high volume of infringing traffic. Because the Internet allows nationwide distribution of P2P software from computers based in the Ninth Circuit, any future challenges to such conduct in other circuits is likely to result in litigation over the jurisdictional aspects of engaging in Internet activity that one circuit has held legal, but which has effects in other circuits. See, *e.g.*, *ALS Scan, Inc.* v. *Digital Serv. Consultants, Inc.*, 293 F.3d 707, 713 (4th Cir. 2002) (discussing the challenges of evaluating personal jurisdiction over Internet-based entities and adopting a test to determine whether a State can assert jurisdiction based on the

extent of interaction with the defendant's Web site), *cert. denied*, 537 U.S. 1105 (2003).

To be sure, copyright holders will attempt to litigate these issues in jurisdictions other than the Ninth Circuit, but there will be significant resources wasted on litigating jurisdictional issues, which would be unnecessary if this Court were to review the holding below and resolve the split in the circuits. It is quite possible that courts outside of the Ninth Circuit will transfer all such challenges to that jurisdiction. In any event, the Court cannot be certain that additional judicial scrutiny of these important issues will be quick in coming or that future cases will present an equally clean vehicle for review. And at a minimum, the Court has the benefit of two fundamentally different approaches to the issues presented and these are a more than adequate platform for evaluating the social and legal issues that should inform the Court's disposition of this case.

CONCLUSION

For the foregoing reasons, and those set forth in the Petition for Certiorari, *Amici* respectfully ask this Court to grant the petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

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